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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 ELIZABETH MANON,

4 Plaintiff,

New York, N.Y.

5 v.

13 Civ. 3476 (RJS)

6 878 EDUCATION, LLC, ALFONSO  
7 GARCIA, Individually, and ALEX  
8 OLINER, Individually,

Defendants.

9 -----x

10 May 15, 2015  
11 3:36 p.m.

12 Before:

13 HON. RICHARD J. SULLIVAN,

14 District Judge

15 APPEARANCES

16 PHILLIPS & ASSOCIATES, PLLC  
17 Attorneys for Plaintiff  
18 BY: ALEX UMANSKY  
19 CASIMIR WOLNOWSKI

20 SHER TREMONTE LLP  
21 Attorneys for Defendants  
22 BY: JUSTIN M. SHER  
23 JUSTIN J. GUNNELL

24 - also present -

25 Alex Oliner, Defendant

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(Case called)

THE COURT: Let's take appearances.

For the plaintiff?

MR. UMANSKY: Good afternoon, your Honor. Alex Umansky on behalf of the plaintiff.

THE COURT: OK. Mr. Umansky, good afternoon. And with you at counsel table?

MR. UMANSKY: Casey Wolnowski.

THE COURT: OK. And I don't see Mr. Wolnowski on the docket sheet. Am I wrong about that?

MR. WOLNOWSKI: No. That is correct, your Honor. I will put in a notice of appearance this afternoon.

THE COURT: OK. All right. Great. Thank you. Have a seat.

And for the defendants?

MR. SHER: Justin Sher, law firm of Sher Tremonte, on behalf of the defendants, and with me at counsel table is Justin Gunnell, my colleague, and defendant Alex Oliner.

THE COURT: OK.

MR. SHER: Good afternoon, your Honor.

THE COURT: Good afternoon. Have a seat.

The other individual defendant is Mr. Garcia. He is not here today?

MR. SHER: Correct.

THE COURT: He plans to be here for the trial?

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1 MR. SHER: Yes, your Honor.

2 THE COURT: OK. All right. There are a number of  
3 issues that were raised as motions in limine and some other  
4 disputes that I think we have to resolve. So I will just run  
5 through them and resolve them. If there is anything else that  
6 I have missed, you will let me know. If there are things that  
7 you want to say to just made a record, I will certainly give  
8 you a chance to do that.

9 We'll start with the plaintiff's motions in limine.  
10 The plaintiff seeks to exclude testimony relating to her prior  
11 criminal record, which includes a 2012 conviction for petit  
12 larceny, a misdemeanor, and a 2011 arrest for petit larceny for  
13 which there is no conviction. I think the arrest is clearly  
14 not going to come in. The conviction I think really turns on  
15 whether or not the conduct that underlies the conviction  
16 involved falsity or deceit. So I don't feel like I really know  
17 enough to make a call on that.

18 So, Mr. Sher, since -- are you looking to introduce  
19 this?

20 MR. SHER: Yes, your Honor.

21 THE COURT: Tell me, what is your understanding of the  
22 facts that you would be introducing it?

23 MR. SHER: Sure. Ms. Manon was asked at the  
24 deposition for all the details relating to her petit larceny  
25 conviction and, unfortunately, she did not provide a response.

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1 So our search of the criminal records database did not go into  
2 any further details concerning the petit larceny conviction.  
3 So to the extent the Court's ruling is depended on learning  
4 more about the underlying facts of that conviction, what I  
5 would propose is just a short interrogatory to the plaintiff  
6 for additional information because it is in their possession,  
7 and Ms. Manon didn't provide a response to the question at her  
8 deposition.

9 THE COURT: All right. I guess one could say that the  
10 remedy would have been to seek relief during discovery as to  
11 somebody not complying or not responding to questions or  
12 requests for further information through interrogatories. You  
13 asked the question at the deposition, and what happened after  
14 that?

15 MR. SHER: That was predecessor counsel so our  
16 predecessor did not follow up but --

17 THE COURT: All right. I think, look --

18 MR. SHER: We do think this information is in the  
19 plaintiff's possession and --

20 THE COURT: Well, presumably this is in her  
21 possession, I agree with that, but I just don't like doing  
22 discovery disputes on the eve of trial.

23 Mr. Umansky, what do you know about this conviction?

24 MR. UMANSKY: Your Honor, my client does not have any  
25 documents regarding this conviction. The conviction was she

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1 took some clothes from a store for her child because she didn't  
2 have any money, was without a job, and they were paying for  
3 medical bills. So she took some clothes. She was caught.  
4 That's it. There are no documents --

5 THE COURT: I mean, what are the circumstances under  
6 which she tried to get them out of the store, do you know?

7 MR. UMANSKY: Putting it under a shirt or a jacket and  
8 trying to walk out.

9 THE COURT: There is a Second Circuit case which  
10 stands for the proposition that a larceny conviction should not  
11 be admitted and should not be put before the jury where the  
12 underlying conduct was shoplifting. The Circuit found at least  
13 in that case, in the circumstances of that case, the  
14 shoplifting did not involve falsity or deceit. I find it  
15 amazing that you could say shoplifting did not involve falsity  
16 or deceit. Unless one announced that they were leaving the  
17 store with the can of tuna fish or clothing that didn't belong  
18 to them, it would seem to me trying to sneak it out is the  
19 epitome of deceit. But that is a case I would recommend to you  
20 that. That is United States v. Estrada.

21 MR. UMANSKY: I believe the Court called it stealth.  
22 The Circuit --

23 THE COURT: I mean, I just don't see how it is not  
24 deceit. But that is the Circuit. I have to follow the  
25 Circuit. So if it is what you describe, I think there is a

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1 good chance it is not coming in under Circuit case law. If I  
2 were on the Circuit, I might have come out a different way, but  
3 it is not for me to second guess the Second Circuit.

4 So, Mr. Sher, with that representation, and with that  
5 authority, do you have any thoughts?

6 MR. SHER: I do. Along the lines of your Honor's  
7 comments, I would argue for a good faith extension or a change  
8 in the law and I would make that argument that the Second  
9 Circuit should not apply it, but I am aware of the cases and  
10 that --

11 THE COURT: I don't think it is coming in. I think  
12 you have made your record. But I also do think that since,  
13 frankly, this should have been raised in discovery, it is sort  
14 of waived at this point. I just don't want to reopen it. So I  
15 am going to deny -- I am going to, I guess, grant the motion.  
16 I am to going to exclude the testimony.

17 The next issue is the plaintiff's motion to exclude  
18 her 2013 unemployment benefit records. The argument by the  
19 defendants is that these are relevant to the issue of damages.  
20 I think that's really an open question in this Circuit. I have  
21 previously come out, you know, with the folks who were saying  
22 that this really isn't relevant. Azcour v. Little Rest Twelve  
23 is my case in which I declined to deduct unemployment benefits  
24 from the award of backpay, and so if that's the law that I'm  
25 going to be applying or I'm not deducting, then I don't think

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1 it is relevant. So my inclination, then, is to grant that  
2 motion as well.

3 I think now with respect to impeachment, it sounds  
4 like defendants are seeking to impeach the plaintiff with  
5 allegations that she made false statements in order to get  
6 unemployment benefits. That's a different story. You can  
7 impeach on that, or you can cross on that. I think depending  
8 on her answers, then the issue will be whether or not you get  
9 to use extrinsic evidence to prove, or to disprove, what she  
10 said on the stand. I think that one we have to sort of take as  
11 it comes. But I don't think they're coming in otherwise with  
12 respect to damages.

13 I think that you can cross on dishonesty, including  
14 dishonest requests for unemployment benefits, and depending on  
15 the answers, maybe that will open up an issue as to whether  
16 they come in as extrinsic evidence that would be useful in  
17 impeaching her. OK?

18 (Pause)

19 All right? OK. The next motion, I guess for now we  
20 go to the defendants' motions. The defendant is seeking to  
21 exclude a photograph of plaintiff's daughter in the hospital  
22 that was sent along with a text message. I've seen it. I  
23 don't think that it's inflammatory. It is a kid in a hospital  
24 bed with some sort of monitor on her. I don't think the jury  
25 will lose its mind over it. I will give an instruction if I

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1 need to, but I don't think that this is improper. I think that  
2 the email is relevant, and the photo is also relevant because  
3 it at least could be probative as to when the defendants  
4 learned about the daughter's disability. So I'm going to deny  
5 that motion.

6 And then we have the defendants' motion to exclude a  
7 witness, Yonira Netera -- Y-o-n-i-r-a, Netera, N-e-t-e-r-a --  
8 who plaintiff is apparently planning to call to testify about  
9 the plaintiff's employment history and allegations of  
10 discrimination. This is a witness who is not listed among the  
11 witnesses on the 26(a) initial disclosures, but it certainly  
12 does seem that defendants were aware of her, right? The  
13 defendants are planning to rely on statements of Ms. Netera in  
14 their case or not?

15 MR. SHER: No, your Honor.

16 THE COURT: No, you are not. All right.

17 So what plaintiff has said is they only intend to use  
18 Ms. Netera as an impeachment witness in the event defendants  
19 put forth evidence purporting to establish prior out-of-court  
20 statements by Ms. Netera. So that sort of neutralizes the  
21 issue. You are not planning to do that, and so Mr. Umansky is  
22 not going to seek to introduce her testimony; right,  
23 Mr. Umansky?

24 MR. UMANSKY: Yes, your Honor, unless defendant Garcia  
25 testifies what he did do at his deposition --



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1 THE COURT: Which is what?

2 MR. UMANSKY: Which is he testified that Ms. Netera  
3 told him why he didn't -- his claim why he didn't believe  
4 plaintiff's daughter was disabled or was sick, for that matter,  
5 because he claimed that Netera told him that plaintiff would  
6 use her daughter's illness as an execute to get out of work,  
7 meaning that she made this whole thing up --

8 THE COURT: Right. The defendants aren't planning to  
9 use that statement, right?

10 MR. SHER: That is correct, your Honor.

11 THE COURT: So I think that one is resolved.

12 I think that is the motions in limine. Am I missing  
13 any? We have some objections on exhibits, which I will talk  
14 about in a motion.

15 MR. SHER: Your Honor, this relates to the first  
16 motion in limine relating to the photograph that is included in  
17 the text message.

18 THE COURT: Yes.

19 MR. SHER: Since filing that motion, plaintiff emailed  
20 us a blown up version of the photograph as well as additional  
21 photographs that were not included in the text message and,  
22 therefore, wouldn't relate to the defendants' knowledge of any  
23 illness.

24 THE COURT: I think what comes in is what -- the text  
25 message I think comes in.

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1 MR. SHER: Thank you, your Honor.

2 THE COURT: I mean, the text message never gets  
3 converted to paper. So it is never going to be bigger than  
4 what is on the screen on one's phone, right?

5 MR. SHER: Correct.

6 MR. UMANSKY: Your Honor, we have the same exact photo  
7 that is in the text message. It is just a bigger version of it  
8 because it is so small in the text message.

9 THE COURT: But that's all the defendant would have  
10 seen, right?

11 MR. UMANSKY: Right. When you open up the text  
12 message through your phone, you would see a bigger version of  
13 the photo rather than how it comes out --

14 THE COURT: The most I will allow would be on a phone.  
15 So that means, I don't know, it is not going to be anything  
16 more than 4 inches probably.

17 MR. UMANSKY: I have all the photos, if your Honor  
18 would like to see them.

19 THE COURT: I mean, you have blown them up to  
20 8-and-a-half-by-11, right? So I am not going to allow  
21 8-and-a-half-by-11 because no defendant ever saw an  
22 8-and-a-half-by-11 unless they printed it out. Unless there is  
23 some evidence that they printed it out, I am not going to let  
24 it go to the jury that way. I think it should be limited to  
25 what the defendants saw in the form that the defendants saw it.

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1 MR. UMANSKY: Our position would be that it would be  
2 the size of the screen of the phone.

3 THE COURT: Yes. I think that's fair. That would  
4 have been two views; one is on a text sort of alongside the  
5 text message, a tiny little thumbprint, and then if you clicked  
6 on that, then it would be probably 3 inches by 4 inches,  
7 roughly, the size of the screen. So I think that's fair. OK.

8 Let's now talk about the exhibits. Not too many  
9 disputes. The defendants object to the admission of the  
10 Complaint. I don't generally put the complaint in. So the  
11 jury doesn't get to see the complaint. Usually the only way a  
12 complaint would come in is if there are statements that the  
13 defense wants to use to impeach as statements of a party  
14 opponent. I suppose plaintiffs could use the Complaint as a  
15 prior consistent statement, but I don't see how on earth that  
16 would be the case. So I can't imagine that the Complaint is  
17 coming in. All right?

18 The defendants object also to the admission of  
19 plaintiff's email to Mr. Oliner on November 21st on the basis  
20 of relevance and hearsay. So it seems to me that if the goal  
21 is to use that email for the truth of what's in it, then I  
22 think it is inadmissible hearsay. I think this is the  
23 post-termination statement of the plaintiff as to what happened  
24 to her, and I don't see why that would be coming in unless it  
25 is offered as a prior consistent statement or something like

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1 that.

2 So what is the purpose for which you intend to offer  
3 this, Mr. Umansky?

4 MR. UMANSKY: Well, defendant Alex Oliner also  
5 received this email. He was copied --

6 THE COURT: Right.

7 MR. UMANSKY: -- on this email.

8 THE COURT: But this is after the adverse action,  
9 right?

10 MR. UMANSKY: Yes. This basically sums up her  
11 feelings after the --

12 THE COURT: Why are her feelings relevant? He has  
13 already acted. So it doesn't go to his state of mind. It  
14 doesn't go to what he knew. I just don't see why her  
15 allegations as of November 21st are relevant.

16 MR. UMANSKY: We would agree.

17 THE COURT: All right. So that is easy.

18 The plaintiffs object to time records and payroll  
19 statements on the grounds of relevance, prejudice and hearsay.  
20 I think that as long as the foundation can be established,  
21 these would be business records, so I don't see a hearsay  
22 problem. It would seem to me they are relevant as to whether  
23 or not there was a nondiscriminatory reason for the termination  
24 if they reflect sort of absences and tardiness. And I also  
25 would think that payroll statements would be relevant to the

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1 issue of damages. So I certainly think these are probably  
2 coming in as long as they can be authenticated as business  
3 records. So I think that objection is overruled.

4 And that's all I have. Is there anything else I have  
5 missed in terms of objections?

6 (Pause)

7 All right. Then I sent you last night, pretty late,  
8 the proposed voir dire. So I don't know if you have had a  
9 chance to look at them. If you have any objections or --

10 MR. SHER: If I may, your Honor, just before we move  
11 on to the voir dire?

12 THE COURT: Yep.

13 MR. SHER: Just one. We have not yet created it, but  
14 now that the time records are likely to be admitted into  
15 evidence, our intention is to create a demonstrative exhibit  
16 based on that information. I didn't want it to be a surprise  
17 in the event that we did that.

18 THE COURT: A demonstrative introduced as an exhibit  
19 or just used in summation?

20 (Pause)

21 A summary chart or a demonstrative?

22 MR. SHER: A summary chart, that is probably a more  
23 precise description.

24 THE COURT: All right. The standard for a summary  
25 chart under the federal rules of evidence is that if it is

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1 helpful, likely to be helpful to the jury, and it's based on  
2 evidence that's been introduced or properly put before the  
3 jury, then it is permissible. So I guess I'll need to see it,  
4 but I think that they can be helpful. And you are not going to  
5 be relying on anything other than the payroll records for that?

6 MR. SHER: Payroll and time records.

7 THE COURT: So, yeah, I get sometimes a little  
8 concerned when it is a summary chart that is based on some  
9 documents and some testimony, because I think sometimes  
10 snippets of testimony in a summary chart can sometimes be  
11 misleading or can be really argument. I am not opposed to it  
12 in general. The devil is in the details. So let's see it as  
13 soon as you've got it.

14 MR. SHER: Thank you, your Honor.

15 THE COURT: But I think they sometimes are valuable.

16 In terms of technology, what are you guys planning?  
17 I've got a decked-out courtroom. So monitors are in the jury  
18 box and in the witness box and at the tables. We have got an  
19 Elmo over here, so if you want to put something on an overhead,  
20 sort of, you can use the screens. It is attached to the  
21 lectern so just -- maybe you can't see it, Mr. Umansky, but  
22 there is a slide-out drawer part of the lectern that has an  
23 overhead camera that allows you to zoom in and project  
24 documents -- hard copy documents that you put on the Elmo. So  
25 you are certainly free to use those.

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1           What are you thinking?

2           MR. SHER: For defendants, I think our intention is to  
3 use the Elmo. To the extent we use technology, we are going to  
4 use the court's technology. I know that in other instances we  
5 have had to meet with the court's tech people to set it up and  
6 make sure it works and we can use it. I don't know if the  
7 Court knows how to use it.

8           THE COURT: Well, the Elmo I can use. But usually if  
9 you are going to bring in a laptop, you will need to get a  
10 laptop order from me, which I am happy to sign. Then I think  
11 it makes sense to connect with our tech person just so there is  
12 no fumbling on the day we are trying to do it.

13          MR. SHER: OK. We will do that, your Honor.

14          THE COURT: Mr. Umansky.

15          MR. UMANSKY: Your Honor, we would agree with that.  
16 And just to confirm that when we're showing the photographs,  
17 that can also be used through the Elmo and it will be projected  
18 to the jurors?

19          THE COURT: Yes.

20          MR. UMANSKY: Thank you.

21          THE COURT: OK. Anybody planning to use exhibits or  
22 visuals in their openings? I don't -- well, sometimes I allow  
23 it. I shouldn't say I have a hard-and-fast policy. It is  
24 unusual. Most people don't try to use visuals, but sometimes a  
25 PowerPoint that has a graphic or two is not necessarily

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1 objectionable. And in summations often people use PowerPoints  
2 that include exhibits that have been received in evidence or  
3 blowups of testimony from the transcript that are highlighted.  
4 That's all fine.

5 So I think you can probably talk to each other and  
6 make sure you have no objections to what the other side is  
7 trying to put in front of the jury, especially in openings  
8 since nothing is in evidence at that point.

9 OK. How long a trial do you think this is going to  
10 be? I think I told the jury four days, but it sounds to me  
11 like it is going to be less than that. What do you think?

12 MR. UMANSKY: It shouldn't take more than four days.

13 THE COURT: So one of the things in the voir dire that  
14 I list is the witnesses and other names that will be mentioned  
15 at trial. I think I asked you folks to supplement that.  
16 Because as of what you sent to me, the only people expected to  
17 testify are the plaintiff and the named defendants and then one  
18 other person, and now it sounds like that one other person may  
19 not be actually testifying. Ms. Netera, she might be mentioned  
20 so I am happy to leave her name in. But are there other names  
21 that that we should be including?

22 MR. UMANSKY: Martin Oliner may be mentioned --

23 THE COURT: I will have already introduced Mr. Oliner  
24 as a party, so I don't need to mention him there.

25 MR. UMANSKY: His father.



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1 THE COURT: I'm sorry, Martin Oliner. OK.

2 Any locations or anything like that?

3 MR. UMANSKY: Possibly the address of the school.

4 THE COURT: OK. What is that again?

5 MR. UMANSKY: I don't have it in front of me. I  
6 believe Mr. Oliner would have that information.

7 THE COURT: OK. Are there any other changes in the  
8 voir dire that anybody has got to propose? I took out a couple  
9 of proposed questions like anybody you know ever been  
10 hospitalized overnight. We'll be here forever. There is  
11 nobody on the planet who doesn't know such a person. So I am  
12 not going to ask questions that are likely to elicit raised  
13 hands for every prospective juror.

14 Mr. Sher.

15 MR. SHER: Yes, your Honor. On the voir dire, I think  
16 the Court got this from the defendants, but, with the Court's,  
17 permission we want to modify it slightly on page 5, where the  
18 court summarizes the defendants' positions.

19 THE COURT: Oh, OK.

20 MR. SHER: All I'm suggesting is that we reverse the  
21 order so that where it says "defendants claim that they were  
22 not aware that Ms. Manon's daughter was disabled at the time of  
23 her termination," that it instead read "claim that she was  
24 terminated for a legitimate nondiscriminatory reason and  
25 because she was not qualified for a position," which is the

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1 line in the next sentence.

2 THE COURT: All right. So "claim that plaintiff was  
3 terminated for a legitimate nondiscriminatory reason and  
4 because she was not qualified for her position," and any  
5 statement at all about the --

6 MR. SHER: Yes. Then followed by -- it is a minor  
7 point, but then followed by, "In addition, defendants claim  
8 that they were not aware that Ms. Manon's daughter was disabled  
9 at the time of termination."

10 THE COURT: OK. I think that is fine.

11 MR. SHER: Oh, yes. And instead of "reason,"  
12 singular, in that line, we would ask for "reasons," plural.

13 THE COURT: OK. All right. I'm sure the jury is not  
14 going to be hanging on every syllable but that is fine. That  
15 is accurate. Anything else?

16 (Pause)

17 MR. SHER: Yes, your Honor. I believe there is one  
18 more.

19 THE COURT: Sure.

20 MR. SHER: On page 7, paragraph 15.

21 THE COURT: Yes.

22 MR. SHER: We just suggest changing "asthma-like  
23 allergic reactions" to "breathing problems" because I think her  
24 other breathing-related --

25 THE COURT: Respiratory problems?

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1 MR. SHER: Yes, that would be it.

2 THE COURT: OK. That is fair.

3 MR. SHER: Your Honor, going back to your Honor's  
4 original question about other names.

5 THE COURT: Mm-hmm.

6 MR. SHER: Mr. Garcia may testify about persons who  
7 attended a meeting at which the plaintiff's attitude was  
8 discussed, and the names of the people who attended that  
9 meeting may come up in the testimony, I'm not sure, and that  
10 two individuals in particular that he mentioned in deposition  
11 testimony are Shakeem McKinnon and Rasean Wright. And I will  
12 spell that. Shakeem is S-h-a-k-e-e-m. McKinnon is  
13 M-C-k-i-n-n-o-n.

14 THE COURT: Yes.

15 MR. SHER: And Rasean is R-a-s-e-a-n and Wright is  
16 W-r-i-g-h-t.

17 THE COURT: All right. I will include those.

18 If anybody has any others, just email it to chambers.  
19 We have a little bit of time left but the sooner the better.

20 MR. UMANSKY: Your Honor, question 24 on page 8.

21 THE COURT: Yes.

22 MR. UMANSKY: "Have you or has any member of your  
23 family or any close friend ever been the victim of a crime? If  
24 so, please explain."

25 THE COURT: Right.

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1 MR. UMANSKY: We don't see the relevance of that for  
2 the jury.

3 THE COURT: I don't necessarily need to keep it in. I  
4 am happy to take it out. I think it is generally designed to  
5 elicit people who have had experiences with sort of the court  
6 system, and sometimes people have very negative ones and we  
7 want to ferret that out. But I think in a case like this it  
8 probably doesn't matter, so I am happy take it out if you are  
9 OK with it.

10 MR. UMANSKY: Thank you.

11 MR. SHER: Your Honor, the defendants' preference is  
12 if we can have more information about the jurors and their  
13 experience with the court system, we would prefer to have that  
14 in.

15 THE COURT: Yes. What is your concern? You think it  
16 is going to lead to bad results, or you just think it is not  
17 particularly relevant?

18 MR. UMANSKY: Well, it may confuse the jury, also. If  
19 defendants want to explore the jurors' experience with the  
20 court system, maybe change it to experience with the court  
21 system or --

22 THE COURT: I have some questions about that.

23 MR. UMANSKY: -- or formal lawsuits. So I don't see  
24 why a crime would necessarily -- or victim of a crime would  
25 necessarily be valuable.

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1 THE COURT: I will think about it. I will think about  
2 it. I think it is relevant in some civil cases, less relevant  
3 in others. I think it is probably less relevant in this one  
4 than some 1983 case or a personal injury case, probably.

5 All right. Anything else.

6 MR. SHER: One more, your Honor.

7 THE COURT: Yes.

8 MR. SHER: I think there is a reference to Mr. Garcia  
9 and Mr. Oliner as "leaders" of the company.

10 THE COURT: Where is that? What page?

11 MR. SHER: Page 5. I just don't know that -- it is  
12 accurate that Mr. Garcia supervised and managed, but I don't  
13 know that he was a leader of the company. So I would suggest  
14 former employer and its employees, 878 Education, Alfonso  
15 Garcia and Alex Oliner.

16 THE COURT: I think I could just say "agents," right?

17 MR. SHER: That is fine, your Honor.

18 MR. UMANSKY: Agents --

19 THE COURT: Officers?

20 MR. SHER: I don't think Mr. Garcia was an officer.

21 MR. UMANSKY: He was a supervisor, but we stipulate  
22 to --

23 THE COURT: And how about if I said "supervisor"?  
24 Were they both supervisors of her?

25 MR. SHER: Mr. Garcia was Mr. Oliner's supervisor. I

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1 think "agents" is the best.

2 THE COURT: I think it is a legally accurate term.  
3 "Leaders" is not a legal term at all. So I think "agents" is  
4 the way to go.

5 All right. Well, let me do this. I think I had  
6 better run for this other sentencing. If there are other  
7 changes or things that you think of, shoot us a short letter by  
8 email. The letter should be in PDF. If it is just adding a  
9 name, you can just send us an email cc'ing the other side, but  
10 for anything more substantive do it by letter. OK?

11 All right. And then we'll start picking a jury -- I  
12 have forgotten the date already. What is the date?

13 MR. UMANSKY: Tuesday, the 26th.

14 THE COURT: OK. So we'll -- you have my method of  
15 picking, right? I gave you how I pick the jury? I will just  
16 put 14 in the box. I will ask them the questions. The others  
17 will have a questionnaire from which they can follow along.  
18 And then depending on what they say, you will follow up with  
19 them.

20 And if we have cause strikes, then I will remove them  
21 and call new names from the back and that will go faster  
22 because I will just ask them you have been following with the  
23 questionnaire so what affirmative answers do you have, and then  
24 we can move quickly through.

25 You each get three peremptory challenges, which will

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1 leave us with a jury of eight. They will all deliberate. And  
2 we'll do the challenges. Plaintiff will do one. The defense  
3 will do one. The plaintiff will do its second. The defense  
4 will do its second. The plaintiffs will do its third. The  
5 defense will do its third, and we are done. OK? I think it  
6 will probably take a few hours, but I think we should be ready  
7 to open by lunch.

8 How long do you think your opening will be,  
9 Mr. Umansky?

10 MR. UMANSKY: No more than ten minutes.

11 THE COURT: OK. Great.

12 And how about you, Mr. Sher?

13 MR. SHER: It should be around an hour, your Honor.

14 THE COURT: OK. Good. Then we will call the first  
15 witness. And we sit from 9:30 to 5:30, so plan on that. An  
16 hour for lunch, typically. And I will instruct the jury about  
17 what they should do and not do. So you have seen my  
18 instructions.

19 MR. UMANSKY: Your Honor, one question about  
20 deposition if we use it for impeachment. Does the jury use it  
21 as a court exhibit? Is the jury allowed to see the deposition  
22 testimony?

23 THE COURT: No. I don't plan on it going into -- I  
24 mean, to impeach? You should impeach the way you would  
25 normally impeach. You confront the witness with a statement.

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1 It has to be an inconsistent statement, obviously. If it is a  
2 party, then it then you are not limited to impeachment,  
3 obviously, if it is a party statement. And then give the  
4 witness an opportunity to admit, deny, or explain. So I don't  
5 typically expect that we'll be introducing the transcript or  
6 whatever the prior statement was in hard copy.

7 MR. UMANSKY: If we're showing the witness his or her  
8 deposition --

9 THE COURT: You could put it on the screen or you  
10 could just give a hard copy to the witness.

11 MR. UMANSKY: OK.

12 THE COURT: So mark it as an exhibit. Call it  
13 Plaintiff's 1 or Plaintiff's 6, whatever. Give it to the  
14 witness, but don't expect that the jury is going to be seeing  
15 it and following along. OK?

16 MR. UMANSKY: Thank you.

17 THE COURT: All right. So with that, I am going to  
18 kick you out of here. And have a good weekend and I'll see you  
19 on the 26th.

20 MR. SHER: Thank you, your Honor.

21 THE COURT: And then I will send you a final copy of  
22 the voir dire probably next week.

23 MR. SHER: Thank you, your Honor.

24 I think the Court asked for hard copies of the  
25 exhibits.



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1 THE COURT: Yes. Give those to my law clerk.

2 MR. UMANSKY: Thank you, your Honor. Have a good  
3 weekend.

4 THE COURT: You, too. Thanks.

5 Mr. Wolnowski, you will file that notice, right?

6 MR. WOLNOWSKI: As soon as I get back to the office,  
7 your Honor.

8 THE COURT: Very well. Thank you.

9 If anybody needs a copy of the transcript from the  
10 court reporter, you can take it up with the court reporter.

11 No foreign-language witnesses, right? Everybody is  
12 English speaking? OK.

13 And talk with each other and with the court reporters  
14 about what you are ordering, if you are ordering transcripts,  
15 and in what form, because that will sometimes affect how we  
16 send things back to the jury during deliberations.

17 Great. OK. Thank you.

18 MR. UMANSKY: Thank you.

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